Supreme Court, U.S.
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No. 91-1211

In The

Supreme Court of the United States

October Term, 1991

CHARLENE EVANS, *Petitioner,*

v.

CITY OF EVANSTON AND DIRECTOR OF PERSONNEL, CITY OF EVANSTON, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

A correct statement of the questions presented for review is as follows:

1. Was there an abuse of discretion on the part of the trial court in denying an enhancement or multiplier of plaintiffs' attorneys' fees to be paid by defendants in a Title VII employment class action?

2. Was there an abuse of discretion by the trial court in refusing to award attorneys' fees from a common fund in a Title VII case when an award of fees payable by the Defendants had been made?

3. Are Plaintiffs who unsuccessfully appeal a portion of a Title VII case entitled to Fees for services in defending a Cross-Appeal when the cause is remanded with respect to the issue raised by the Cross-Appellant and the plaintiffs fail to receive any benefits from their original appeal?

4. Can a trial court apply an across-the-board reduction of attorneys' fees in a Title VII action?

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CITY OF EVANSTON AND DIRECTOR OF PERSONNEL, CITY OF EVANSTON, *Respondent.*

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

The Respondents, City of Evanston and Director of Personnel, City of Evanston, respectfully pray that the Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit be denied.

STATEMENT

The original case which gave rise to the fee appeal was a civil action arising under Title VII of the Civil Rights Act of 1964. The Plaintiff, Charlene Evans, was a representative of a class challenging the firefighters physical agility test administered by the City of Evanston in 1983. She brought this action on her own behalf and on behalf of the class consisting of females who applied for the position of firefighter in the City in 1983 and failed the physical agility test. The case was tried in April of 1988. The trial court found that the job analysis met the minimum standards for performing a firefighters job analysis (App. 41). It further found that the Evanston physical agility test was content valid (App. 43). The court, however, found that the cut-off score chosen by Evanston was unjustified (App. 46).

In crafting the remedy the trial court held that it had considerable discretion to devise appropriate relief. It prohibited the city from using the physical agility test in any way that unlawfully discriminated against firefighter applicants, but using the test at issue was permissible if the court approved in advance the establishment of a cut-off score (App. 46). The court also ordered the award of back pay to be distributed on an aliquot basis. It refused any further equitable relief.

The City of Evanston determined not to appeal. The plaintiffs, however, filed an appeal challenging the lack of the equitable relief. The City then cross-appealed challenging the finding of liability. The Seventh Circuit affirmed the trial court's finding that the test was valid. The court found that the trial judge had awarded "a tiny amount of back pay", which amount had not been challenged. The Seventh Circuit found that the additional relief sought was not required as a matter of law. That portion of the trial judge's order finding that the cut-off score was not justified was vacated in light of *Wards Cove Packing Co. v. Antonio*, 109 S.Ct. 2115 (1989) (App. 53).

On remand the City offered further evidence in support of a cut-off score and the trial court entered an order establishing a cut-off score. The plaintiffs did not appeal the cut-off score. The attorney for the plaintiffs then filed a fee petition. The court informed counsel that its practice was to examine at the request of the defendants, specific areas of the plaintiffs' counsel's work and to apply the findings made there to the remaining hours claimed (App. 16). The plaintiffs' counsel made no objection to this technique. The court explained that the sampling procedure operates on the reasonable premise that a lawyer's billing and work habits and practices are in fact habits and practices which will uniformly apply to all of the lawyer's work (App. 16).

The trial court found that sixty one hours to prepare findings of fact was somewhat excessive and found that 35 hours was the maximum amount a reasonable attorney would have had to spend to prepare them. With respect to the motion for summary judgment, the court found that 78 hours was excessive for a motion which was not successful, but constituted a reasonable step in the litigation. The trial court regarded a total of 63 hours to be an appropriate expenditure for the time to prepare the motion

(App. 17). The trial court found that 70 percent of the total hours claimed in these two areas was reasonable and applied the 70 percent figure to the hours requested which were 260 hours for principal counsel and 74 hours for associate counsel (App. 17). The Defendants' counsel spent 193 hours on the trial (App. 17).

Plaintiffs' counsel contended they deserved a multiplier to compensate for risk and contingency. The Defendants said there ought to be a downward adjustment because of the lack of success since the Plaintiffs gained so little and lost on two major issues they raised (i.e., validity of the test and scope of relief). The court found that the positions offset each other (App. 17). The court found that while the Plaintiffs achieved something of value to themselves and to future applicants, and there was reason to encourage counsel to take such cases, on the other hand much of the effort was wasted and no incentive (but rather a disincentive) is needed for such efforts. The trial court then concluded that neither an upward nor downward adjustment is required and in the exercise of his discretion found neither adjustment ought to be made (App. 17). The trial court refused to award any fees for the hours spent on appeal because the Plaintiff did not prevail on any issue in the appeal (App. 16). It should be noted that there was not a 70 percent across the board reduction in total time, but rather a 30 percent reduction in total time. The Court awarded fees of $200 an hour for principal counsel and $120 an hour for associate counsel.

On the fee appeal, at issue here, the Seventh Circuit found that all the Plaintiffs received on appeal was a reversal and remand on the one issue on which they had achieved success in the district court (App. 4). The court noted that a civil rights plaintiff who, having won a judgment in the district court, appeals seeking a greater victory and fails in his appeal would be hard pressed to demonstrate his entitlement to his attorneys' fees on appeal even though he remains the prevailing party in the underlying litigation (App. 4). The court concluded that the Plaintiffs' counsel won in part in the district court, but did "fail utterly" on appeal.

With respect to the 30 percent reduction, the Seventh Circuit concluded that the sampling technique was reasonable and that Plaintiffs' counsel had been given ample warning of the method

and a chance to respond (App. 7) The Court found that the district court explained how it arrived at the number of hours it identified as reasonable and the number it identified was in the range of reasonable estimates and therefore the trial court was well within its discretion (App. 8).

With respect to the fee enhancement for a contingency the Circuit Court agreed with the district court's view that the lodestar figure is the center piece of fee awards and that contingency enhancements above the lodestar are appropriate only in cases of exceptional success. The court agreed with the district court that this was not a case in which the Plaintiffs enjoyed exceptional success. The Plaintiffs lost on one of their two Title VII claims and the district court denied them the relief they sought, employment as firefighters in Evanston, opting instead for the more limited remedy of damages. Given the incomplete victory the Plaintiffs obtained in the district court, the circuit court could safely say that the district court did not abuse its discretion in concluding that no enhancement in the fee awarded was appropriate (App. 9). With respect to a share in the damages recovered, the court noted that no common fund recovery is allowable where the prevailing private plaintiff may obtain fees from the government. The focus on damages would contradict Congress' purpose in providing for fee shifting in these cases. The court concluded that the District Court was correct to rule it was unnecessary to allow both a recovery from the Defendants and the common fund in this case (App. 11). The petition for rehearing en banc was denied (App. 15).

REASONS FOR DENYING THE WRIT

In this case both the trial court and the Seventh Circuit carefully analyzed the existing law with respect to the award of attorneys' fees in Title VII cases. This case represented a minimal victory for the Plaintiffs. The principal objectives of the Plaintiffs was to invalidate the physical agility test as applied to female applicants for firefighters positions and to secure employment for females who had failed the physical agility test. The Plaintiffs failed in both respects. As a result of this case, the City of Evanston has a valid firefighters physical agility test which it may apply to both male and female applicants. It further has a cut-off score which has been validated by the

district court. Evanston achieved a major victory. Moreover, the Plaintiffs' attorneys have not gone unrewarded. They have in fact received more than $58,000 for their efforts.

The attempt to secure fees for an appeal which utterly failed is highly presumptuous. Not only did the Plaintiffs fail to secure the relief they sought, but the only point on which they had originally prevailed was vacated. While the Plaintiffs were in fact the nominal prevailing parties because they received what the Circuit Court characterized as "a tiny amount of back pay" (App. 53), the appeal failed to gain any additional relief. As we shall demonstrate below, the Seventh Circuit's opinion was consistent with the decisions of this court and the other circuits which have considered the question. The sampling technique used by the trial court has also been recognized by this court as an appropriate measure of determining reasonable attorneys' fees. The trial court, as the circuit court noted, carefully explained the basis upon which he arrived at the reasonable number of hours to be expended in this case. Clearly there was no abuse of discretion.

Thus, the decision of the Seventh Circuit was well-founded based upon repeated decisions of this court and the prevailing law. No reason exists for granting the writ.

A CONTINGENCY MULTIPLIER IS NOT WARRANTED

The Court of Appeals, as did the trial court, denied the Plaintiffs' attorneys request for a fee enhancement for contingency. The district court rejected counsel's request for an enhancement above the lodestar figure because of the limited success plaintiffs enjoyed. The Court of Appeals agreed with the district court's view that the lodestar figure is the "centerpiece of fee awards" *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989), and that contingency enhancements above the lodestar figure are appropriate only in cases of exceptional success. The Court of Appeals also specifically cited the plurality opinion of Justice White in *Pennsylvania v. Delaware Valley Citizens Council*, 483 U.S. 711, 728 (1987).

The law is absolutely clear that multipliers are not favored and are to be awarded only for exceptional success. *Blum v.*

Stenson, 465 U.S. 886, 79 L.Ed.2d 891 (1984); *Pennsylvania v. Delaware Valley Citizens Council*, 483 U.S. 711, 97 L.Ed.2d 585 (1987); *Pennsylvania v. Delaware Valley Citizens Council*, 478 U.S. 546, 92 L.Ed.2d 439 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 76 L.Ed.2d 40 (1983).

Upward adjustments in Title VII cases are justified and permissible only in exceptional cases. *Laffery v. Northwest Airlines, Inc.*, 746 F.2d 4, 27-29 (1984); *Norman v. Housing Authority*, 836 F.2d 1292, 1306 (11th Cir. 1988); *McKinnon v. City of Berwyn*, 750 F.2d 1383, 1392-93 (7th Cir. 1984); *Hagee v. Bauer*, 827 F.2d 101, 111 (7th Cir. 1987).

In the case of *Texas Teachers v. Garland Independent School District*, 489 U.S. 782, 101 L.Ed.2d. 866 (1989) this court cited *Hensley* for the proposition that the district court had discretion to arrive at a reasonable fee award when success as here was limited. In that case, this court said "In such a case, we indicated that 'the most critical factor is the degree of success obtained'."

The trial court in light of the limited success denied both the Plaintiffs' attorneys request for an enhancement and the Defendants' request for a reduction based upon lack of success. The Court of Appeals in concluding that this case was not one in which the Plaintiffs enjoyed exceptional success found that the District Court did not abuse its discretion in concluding that no enhancement in fees awarded Plaintiffs' counsel was appropriate (App. 9).

There is nothing in *Pennsylvania v.Delaware Valley Citizens Council (II)*, 483 U.S. 711 (1987) which mandates a contingency multiplier. Given the most favorable treatment of Justice O'Connor's concurring views, the most that can be said is that consideration of a contingency in setting a reasonable fee is permissible. But in that area, the discretion of the trial judge as affirmed by the Court of Appeals must be respected. As four members of the court in the plurality opinion indicated, however, multipliers or other enhancement of a reasonable lodestar fee for assuming risk is impermissible under fee shifting statutes.

The Plaintiffs' contention in their petition that there is substantial confusion among the lower Federal courts which

requires a consideration by this Court simply is not true. Plaintiffs concede that the most recent decision on this matter was *King v. Palmer*, 950 F.2d 771 (D.C. Cir. 1991). In that case, the majority of the court in an *en banc* decision specifically held that a reasonable lodestar fee awarded under Federal fee shifting statutes could not be enhanced to compensate the prevailing party for initial risk of loss. Contrary to the petitioner's contention, that view is totally consistent with *Delaware Valley (II)* and the numerous cases construing that opinion.

The cases cited by the petitioner as supporting an enhancement for a contingency, of course, do not require a contingency enhancement. In the case of *Fadhl v. City of San Francisco*, 859 F.2d 649 (9th Cir. 1988) the court was merely affirming a trial court's determination with respect to fees. In *Dague v. City of Burlington*, 935 F.2d 1343 (2nd Cir. 1991) the Second Circuit specifically disagreed that Justice O'Connor's view in *Delaware Valley II* was controlling, 935 F.2d 1360. In *Kelly v. Matlack*, 903 F.2d 978, the Third Circuit in an age discrimination case held there should be no enhancement for the contingency factor over the lodestar and that there was no abuse of discretion in refusing an enhancement for contingency. In the case of *Spell v. McDaniel*, 852 F.2d 762 (4th Cir. 1988) the Fourth Circuit rejected a plea for enhancement beyond the lodestar. In the case of *Leroy v. City of Houston*, 831 F.2d 576 the Fifth Circuit rejected an enhancement beyond the lodestar after reviewing *Delaware Valley* and Justice O'Connor's concurring opinion. In the case of *Perotti v. Seiter*, 935 F.2d 761 (6th Cir. 1991) the Sixth Circuit remanded back the case after a multiplier had been awarded and held that *Delaware Valley* did not provide guidance 935 F.2d 765. In the case of *Gilbert v. Little Rock*, 867 F.2d 1063, the court reduced an enhancement approved by the district court. In the case of *Wulf v. City of Wichita*, 883 F.2d 842 (10th Cir. 1989), the Tenth Circuit found that no risk factor enhancement was appropriate despite the district court's finding and remanded the case back. The case of *Davis v. Locke*, 936 F.2d 1208 (11th Cir. 1991) involved an enhancement which was justified by the deterrent effect of such holding in a case which involved the discipline of prison inmates.

The Seventh Circuit properly held that no portion of a common fund is available for attorneys' fees because the private plaintiffs were entitled to have their fees paid by the governmental agency. There is nothing inconsistent with the policy underlying the common fund doctrine when, as here, a specific statute is involved. The case of *Boeing Co. v. van Gemert*, 444 U.S. 472 (1980) involved a class action suit. The question before this court there was whether or not an award of attorneys' fees should be assessed against part of a judgment fund not claimed by absentee class members as well as against the part claimed. The court merely held that when a lawyer recovers a common fund he is entitled to a reasonable attorneys' fees from the fund as a whole. The case, however, does not involve a statute which as here specifically provides for an award of attorneys' fees to be paid by a losing party. Whatever else they may be, the class clearly was not the losing party in this case. The losing party, the City of Evanston, has paid the plaintiffs the fee determined by the court. The decision of the Seventh Circuit in no way discourages attorneys who might otherwise file Title VII class actions. The statutory provision for attorneys' fees fully compensates attorneys who are successful in this matter. To argue that somehow or other the failure to grant a contingency multiplier would discourage such litigation is wholly without merit.

THE PLAINTIFFS WERE NOT THE PREVAILING PARTY ON THE FIRST APPEAL

We do not argue that the Plaintiffs are not the prevailing party in this litigation. However, as the Seventh Circuit recognized, the Plaintiffs gained absolutely nothing by virtue of the appeal which resulted in vacating the only portion of the judgment below upon which the Plaintiffs prevailed. Both the trial court and the Seventh Circuit specifically held that fees for the first appeal were inappropriate because the Plaintiff did not prevail on any issue on the appeal. Plaintiff simply did not prevail in the defense of the cross-appeal. In fact they lost on the only point on which they prevailed at trial because the portion of the district court's decision invalidating the scoring method was vacated. The citation of *Lattimore v. Olman Construction*, 868 F.2d 437 (11th Cir. 1989) is without relevance. The court there

simply affirmed the district court which had made findings which the court on review held were not clearly erroneous. All that was involved in successive appeals in *Lattimore* was the determination of the amount of the attorneys' fees. In the appeal for which the Plaintiffs' counsel now seeks additional compensation, substantive issues were raised and the Plaintiffs lost on each of those issues. The decision of the Seventh Circuit and the trial court in refusing to award fees for an appeal on which the Plaintiffs' failed to prevail on any aspect was not clearly erroneous. Moreover, in *Lattimore* there had been an admission that an enhancement was proper and the court of appeals there merely affirmed the district court.

In this case the trial court and the Seventh Circuit specifically held that fees for the first appeal were inappropriate because the plaintiff did not prevail on any issue of the appeal.

The citation of *Texas State Teachers v. Garland Independent School Dist.*, 109 S.Ct. 1486 (1989) is clearly not appropriate. Justice O'Connor wrote the opinion in that case and indicated that the standard to be applied in determining attorneys fees was that set forth in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). Nothing in Garland relates in any manner to requiring payment of attorneys fees for an unsuccessful appeal. In the *Texas Teachers* case, the court cited *Hensley* for the proposition that the District Court had discretion to arrive at a reasonable fee award when the success, as here, was limited. The court noted that the District Court should exercise its discretion to arrive at a reasonable fee award, either by attempting to identify specific hours that should be eliminated or by simply reducing the award to account for the limited success of the plaintiff. When as here, no relief was granted on appeal, the party plaintiff is not the prevailing party and is not entitled to attorneys' fees. *Hewitt v. Helms*, 42 U.S. 755, 96 L.Ed.2d 654 (1987). The plaintiffs received absolutely nothing as a result of their appeal. In fact, the Court of Appeals vacated the only portion of the order below in which the plaintiffs could be said to have prevailed. Moreover, the appeal was initiated by the plaintiffs. The City had determined not to appeal and cross-appealed only because it was required to defend the appeal.

In the case of *Hanrahan v, Hampton*, 446 U.S. 754, 64 L.Ed.2d 670 (1980), the court specifically denied attorneys fees under 1988 to parties who obtained a reversal of a directed verdict and remand for new trial on appeal. The court at page 758 in reversing an order granting fees on appeal said

> "The respondents have, of course not, prevailed on the merits of any of their claims."

A plaintiff-appellant who has prevailed in the District Court but does not prevail on his appeal seeking greater success is not entitled to appeal fees, where the court of appeals either dismisses the appeal or affirms the judgment below. *Buian v. Boughard*, 687 F.2d 859 (6th Cir. 1982); *Women's Serve, P.C. v. Thon*, 645 F.2d 649 (8th Cir. 1981). The appropriate test is whether the party seeking compensation substantially prevailed at the appellate level. *Kelly v. Metro County Board of Education*, 773 F.2d 677. In this case, the plaintiffs clearly did not prevail in any manner at the appellate level.

In the case of *Ustrak v. Fairman*, 852 F.2d 983 (7th Cir. 1988), the court held that a civil rights plaintiff who having won judgment in the District Court, appeals seeking a greater victory and fails in his appeal, would be hard pressed to demonstrate an entitlement to attorneys' fees on appeal. As noted by the Court of Appeals in its opinion of August 14, 1991, in this case the plaintiffs' counsel did "fail utterly" on appeal. (App. 5).

The statements in the petition which speculate upon what a fee paying client would have done with respect to appealing or defending a cross-appeal are without any foundation in the record. The Seventh Circuit properly held that attorneys' fees could not be awarded from any source to the plaintiff's counsel who failed utterly both in his appeal and in defending the cross appeal. The Seventh Circuit's decision is not at odds with this Court's definition of "prevailing party" nor is it in conflict with the decisions of any other court.

THE EXERCISE OF DISCRETION

This court has repeatedly affirmed the proposition that the award of attorney's fees pursuant to subsection 1988 lies within the sound discretion of the trial court and the court's determi-

nation of this matter will not be disturbed unless clearly erroneous. *Riverside v. Rivera*, 477 U.S. 561 (1986); *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Webb v. Dwyer County Board of Education*, 471 U.S. 234 (1985).

The Plaintiffs' counsel now essentially urges that somehow there was an abuse of discretion and that the trial court and the Seventh Circuit failed to justify the reduction in the hours claimed. The Seventh Circuit in its opinion carefully considered the manner in which the trial court arrived at this reduction (App. 5). The Seventh Circuit concluded that the sampling technique employed by the district court was not arbitrary. The Court of Appeals concluded that the method employed by the district court was reasonable and the Plaintiffs' counsel were given ample warning of the method and the chance to respond when it was applied to them (App. 7). The Seventh Circuit concluded that because the district court explained how it arrived at the number of hours it identified as reasonable and because the number it identified was in the range of reasonable estimates, it was well within the court's discretion in fixing the allowable number of hours (App. 8). A setting of attorneys' fees as the court noted is not an exact science. What is required is a determination of whether there has been an abuse of discretion in arriving at the final dollars to be awarded. The *Hensley* case sets forth criteria in determining the manner in which attorneys' fees should be awarded. Clearly there was no abuse of discretion here and the trial court's findings were properly affirmed by the Seventh Circuit. The trial court in fact explained the basis of his 30 percent across the board reduction.

In reviewing findings regarding the reasonableness of hours claimed in the fee petition, the amount of the reduction, and technique of arriving at the deduction, the Courts of Appeal give substantial deference to the District Court's fact finding discretion. *Moore v. City of Des Moines*, 767 F.2d 343, 346 (8th Cir. 1985), *cert. denied* 88 L.Ed.2d 781 (1986); *Goodsen v. City of Atlanta*, 763 F.2d 1381, 1390 (11th Cir. 1985); *Fishman v. Clancy*, 763 F.2d 485, 491 (1st Cir. 1985). In the case of *McKinnon v. City of Berwyn*, 750 F.2d 1383 (7th CIr. 1984), the court noted at 1393 that the District Judge

> "Lived with this case through its life, observed the lawyers in action, has long experience in civil rights litigation and all in all has a better feel than we for the reasonableness of the time put in by McKinnon's counsel."

See also, *Lynch v. City of Milwaukee*, 747 F.2d 423, 428 and Note 4 (7th Cir. 1984).

The technique of making an across the board percentage reduction in total compensable hours as a practical means of trimming fat from a fee application where claimed hours are found to be excessive or duplicative in preference to performing an item by item counting has received general acceptance by the several circuits. *Copeland v. Marshall*, 641 F.2d 888, 903 (D.C. Cir. 1980) (*en banc*); *New York Assn. for Retarded Children v. Metropolitan District Commission*, 847 F.2d 12, 15-17 (1st Cir. 1988); *Daggett v. Kimmelman*, 811 F.2d 793, 797-98 (3rd Cit. 1987).

In *Hensley v. Eckerhart*, 461 U.S. 424, 76 L.Ed.2d 40 (1983), at 461 U.S. 436, this Court said with regard to making a determination of hours that are excessive:

> "There is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment."

Elimination of unreasonable hours by a percentage reduction of 30 percent, as was done in this case, was carefully explained by the trial court. The determination to impose that across the board reduction in time was well within the discretion of the trial court. The across the board reduction in time was not arbitrary and it did not punish efficiency.

In the case of *Rode v. Dellaciprete*, 892 F.2d 1117 (1990), the court applied the criteria of abuse of discretion in its review. It reviewed the findings under the clearly erroneous standard and held that a contingency multiplier was granted only in rare cases and a reduction in hours is to be reviewed in light of the abuse of discretion test. The *Rode* case merely holds that the

District Court should explain how it arrived at the reduction. In this case, the District Court clearly explained its conclusions as to each of the two pleadings which were suggested for inquiry pursuant to the court's previous indication of how he would determine the reasonableness of hours. The discussion of the trial court in its memorandum opinion clearly satisfies the requirement that the District Court provide a concise and clear explanation of its reasons for the fee award. There clearly was no abuse of discretion on the part of the trial court in its reduction by 30 percent of the hours claimed particularly in light of the limited success.

The case of *Sims v. Jefferson Downs Racing Assn.*, 778 F.2d 1068 requires only an explanation by the trial court of the reasons for reducing the number of hours. In that case, the court adopted the standard of "results obtained" in adjusting the lodestar. Unlike the case at bar, the trial court there did not set forth any reasons for reducing the number of hours.

It is thus clear that the claim that the reduction in hours here was arbitrary was without merit. This was not a case of "eyeball reduction" without analysis but the result of careful study based upon a reasonable method of determining whether the hours claimed were excessive. There is no conflict in the decision of the Seventh Circuit with the decisions of the other circuits and of this court in its determination that the trial court did not abuse its discretion in reducing the number of hours in a logical and reasonable manner.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the petition for Writ of Certiorari should be denied.

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